



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 31 2014

REPLY TO THE ATTENTION OF:

WW-16J

Ms. Lee Anne Devine
U.S. Army Corps of Engineers
Louisville District
CELRL-OP-FN
P.O. Box 59
Louisville, Kentucky 40201-0059

Dear Ms. Devine:

The U.S. Environmental Protection Agency has reviewed public notice LRL-2013-617, for Duke Energy's Gibson Station facility, west of Princeton, Gibson County, Indiana. The project includes a request for an After-the-Fact (ATF) permit for wetlands previously impacted without a Clean Water Act (CWA) Section 404 permit. Prior impacts total 5.84 acres and proposed impacts total 4.99 acres. Impacts to waters of the U.S. resulted or will result from truck/scrapper/shovel removal of borrow material from wetlands to provide earthen cover material for a land fill and ash pond closure.

The Clean Water Act Section 404(b)(1) Guidelines (Guidelines) require that the applicant demonstrate there are no practicable alternatives available that would have a less adverse impact on the aquatic environment for non-water dependent activities.¹ The Guidelines presume that less damaging upland alternatives are available for these activities.

EPA has serious concerns with this project. Using waters of the U.S. for borrow material is not recommended as it is presumed that upland alternatives exist for this purpose. Please provide us with the alternatives analysis that was conducted by the applicant.

The proposed mitigation is unacceptable. The applicant proposes to preserve 18.63 acres of existing forested wetlands and create 16.3 acres of scrub-shrub and emergent wetlands. Information on the quality of wetlands impacted and the quality of wetlands to be preserved is required. Some of the proposed mitigation is located along roads or wedged in between roads and facility features. Furthermore, the creation of 16.63 acres of wetlands is not preferred mitigation. Please provide us with the plans to create wetlands, including performance standards to assure hydrology will be present. Open water areas should be kept to a minimum. All mitigation areas should be protected by a conservation easement and additional mitigation for temporal loss should be required for those wetlands impacted without a permit.

¹ 40 C.F.R. § 230.10(a)

EPA recommends that this permit be denied because it does not comply with the 404(b)(1) Guidelines. Upland alternatives are presumed to exist for borrow material and the proposed mitigation is not acceptable. Please contact EPA prior to making a permit decision. If you have any questions, please contact Wendy Melgin at 312-886-7745.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Swenson".

Peter Swenson, Chief
Watersheds and Wetlands Branch

cc: Mr. George DeLancey
U.S. Army Corps of Engineers
Louisville District
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